

Resolution No.:	<u>18-543</u>
Introduced:	<u>June 28, 2016</u>
Adopted:	<u>June 28, 2016</u>

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: County Council

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**SUBJECT:** DOT Docket No. AB745  
Abandonment – Overlook Park Drive, General Store Drive, Clarksridge Road and  
Clarksburg Square Road in the Clarksburg Town Center Subdivision  
Clarksburg

**Background**

1. By letter dated September 4, 2015 from Elm Street Development, T/A Third Try LC, the Applicant, a request was made for the County to abandon Overlook Park Drive, General Store Drive, Clarksridge Road and Clarksburg Square Road in the Clarksburg Town Center in Clarksburg. The portions of the rights-of-way for which abandonment are sought are part of the unimproved Clarksburg Town Center Subdivision owned by the Applicant.
2. A Public Hearing to consider the abandonment proposal was held on December 2, 2015 by the designee of the County Executive.
3. Verizon did not respond within 60 days and therefore, concurrence is presumed.
4. Washington Suburban Sanitary Commission consent conditioned upon approval of the pending site plan and other approvals.
5. Washington Gas did not respond within 60 days and therefore, concurrence is presumed.
6. PEPCO did not respond within 60 days and therefore, concurrence is presumed.
7. The Montgomery County Police Department did not respond within 60 days and therefore, concurrence is presumed.
8. The Montgomery County Planning Board approved the abandonment request conditioned upon approval of pending site plan and other required approvals.
9. The Department of Transportation (DOT) recommended approval of the abandonment request conditioned upon Applicant granting any necessary easements for county storm drainage facilities and public utilities, as applicable; and Applicant must meet the requirements of Preliminary Plan No. 11995042B.

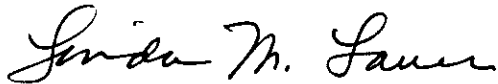
10. The Office of the Fire Marshal expressed no objection provided that the Department of Fire and Rescue Service will have access and water supply as approved by the Site Plan.
11. The County Executive recommends approval of the proposed abandonment.

**Action**

The County Council for Montgomery County, Maryland, finds that the portions of Overlook Park Drive, General Store Drive, Clarksridge Road and Clarksburg Square Road in the Clarksburg Town Center Subdivision of Clarksburg proposed for abandonment are no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonments subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonments becoming effective:

1. That the Department of Fire and Rescue Service will have access and water supply as approved in the Site Plan;
2. The Applicant must grant any necessary easements for county storm drainage facilities and public utilities, as applicable; and the Applicant must meet the requirements of Preliminary Plan No. 11995042B;
3. Montgomery County Planning Board approval of the pending Site plan and other required approvals;
4. Washington Suburban Sanitary Commission approval of the pending Site plan and other approvals; and
5. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonments of the subject areas.

This is a correct copy of Council Action.



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Linda M. Lauer, Clerk of the Council



# MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject:</b>	Abandonment – Clarksburg Town Center Overlook Park Drive, General Store Drive, Clarksridge Road & Clarksburg Square Road	<b>Executive Order No.</b> 151-15	<b>Subject Suffix</b> AB
<b>Originating Department:</b>	Transportation	<b>Department Number</b> 52-15	<b>Effective Date</b> 10/13/15

AB745

1. Pursuant to Section 49-62 of the Montgomery County Code (2004) as amended, the County Executive or his Designee shall conduct a Public Hearing

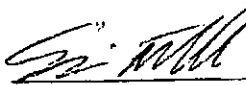
at 7:00 p.m. on Wednesday December 2, 2015  
Executive Office Building Lobby Auditorium  
101 Monroe Street  
Rockville, Maryland 20850

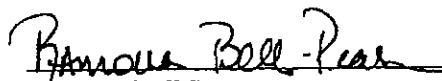
to consider an application received from Third Try LC (Elm Street Development), the Applicant, seeking abandonment of portions of Overlook Park Drive, General Store Drive, Clarksridge Road and Clarksburg Square Road in the Clarksburg Town Center Subdivision.

2. After the aforesaid Hearing, the Hearing Officer shall report his findings and recommendations to the County Executive for further consideration as prescribed by County Code.

Approved as to Form and Legality  
Office of the County Attorney

APPROVED

By:   
Eric C. Willis  
Assistant County Attorney  
Date: 9/22/15

  
Ramona Bell-Pearson  
Assistant Chief Administrative Officer  
Date:

**Distribution:**

Department of Transportation  
Department of Finance  
Office of the County Attorney



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett  
County Executive

Timothy L. Firestine  
Chief Administrative Officer

**IN THE MATTER OF: AB745, PETITION TO ABANDON OVERLOOK PARK DRIVE,  
GENERAL STORE DRIVE, CLARKSBIDGE ROAD, AND CLARKSBURG SQUARE  
ROAD IN THE CLARKSBURG TOWN CENTER.**

**Proposed abandonment of several roads in the Clarksburg Town Center: Overlook Park  
Drive, General Store Drive, Clarksbridge Road, and Clarksburg Square Road.**

**BEFORE: Michael L. Subin, Public Hearing Officer**

**PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION**

**I. Background**

On September 4, 2015, the Montgomery County Department of Transportation ("MCDOT") received a petition from Elm Street Development T/A Third Try, LC (the "Applicant") requesting a closure of certain rights-of-way ("ROW") in the Clarksburg Town Center, previously abandoned under County Council Resolution 16-1488 in 2010. The closure request is the result of an amended site plan for Clarksburg Town Center where Overlook Park Drive is earmarked as a private road and General Store Drive becomes a mews area.

The intent of §49-62, Abandonment authority; Procedures; Hearings, of the Montgomery County Code (2004), as amended (the "Code"), is to establish procedures for the closure to public use or abandonment of the County's right to use any ROW. Pursuant to §49-62(f), Executive Order 151-15, authorizing the hearing became effective October 13, 2015. (Exhibit 2) Letters announcing the hearing were sent to members of the Clarksburg Civic Association as required by §49-62(d). (Exhibit 3) Public notice of the hearing appeared in the *Montgomery Sentinel* on November 19 and 26, 2015. (Exhibit 4) Signage announcing the public hearing was installed on October 29, 2015. (Exhibit 6) Additionally, an aerial photograph of the area was provided for the record. (Exhibit 5)

Pursuant to §49-62(h) of the Code, comments were solicited from various government agencies and other parties:

1. The Montgomery County Department of Permitting Services, Office of the Fire Marshal ("OFM"), in an e-mail dated October 1, 2015, stated that they had no objection to the abandonment provided that the Montgomery County Fire and Rescue Service ("MCFRS") will have access and water supply as approved by the Site Plan (Exhibit 7);
2. MCDOT provided conditional approval predicated on: the applicant must grant any necessary easements for county storm drainage facilities and public utilities, as applicable; and the applicant must meet the requirements of the Montgomery County Planning Board in Preliminary Plan No. 11995042B (Exhibit 8);
3. The Montgomery County Planning Board, in a letter dated November 17, 2015, offered conditional approval pending site plan and other required approvals (Exhibit 9); and
4. The Washington Suburban Sanitary Commission, in a letter dated November 17, 2015, offered conditional approval pending site plan and other required approvals. (Exhibit 10)

Missing were comments from the Montgomery County Police Department, Allegheny Power, Verizon, and Washington Gas, all of whom were notified. The Code assumes concurrence with the proposal if an agency does not respond to the request in 60 days.

A public hearing regarding the proposal was held on December 2, 2015, in the Lobby Auditorium of the Executive Office Building, 101 Monroe Street, Rockville, MD 20850, commencing at 7:09 pm. The hearing concluded at 7:22 pm. The record remained open until 5:00 pm December 16, 2015.

## **II. EVIDENCE AND SUMMARY OF TESTIMONY**

### **A. Project Description**

The proposal for the abandonments was described by Michael Cassedy, of MCDOT. In this case, MCDOT has proposed abandoning Overlook Park Drive, General Store Drive, Clarksbridge Road, and Clarksburg Square Road in the Clarksburg Town Center. In 2010, the Montgomery County Council approved the abandonment of three of the ROW (not including General Store Drive) to a previous owner; however, the abandonments were not perfected within

the required five years of approval. The current owner, the Applicant, is now seeking abandonment of the ROWs.

#### **B. Favorable Testimony**

Kathryn Kubit, Vice President of Third Try, LC, was present to answer any questions.

No other individuals were present nor were any comments received for the record.

#### **C. Unfavorable Testimony**

No citizens were present to object to the proposal nor were any comments received for the record.

### **III. Conclusions and Recommendations**


I find that the intent of §49-62 of the Code and the requirements set forth have been met. I also find that the hearing and notice procedures haven been satisfied, and that the public, public agencies, and other interested entities have been given an opportunity to review this specific proposal.

I find that the proposed abandonments of the ROWs will be in the public interest. The "public interest" is a broad concept that manifests itself in a variety of contexts. When, as in the instant case, the project will be considered to be in the public interest, it will do such things as promoting the general health and safety of the citizenry, protect the environment, preserve open space, or otherwise advance the community's quality of life. (*See City of Monterrey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 701 (1999). This includes providing for the safe and efficient flow of pedestrian and vehicular traffic. (*See Wheaton Moose Lodge No. 1775 v. Montgomery County, Maryland*, 41 Md. App. 401, 397 A.2d 280 (1979).

However, the approval is conditioned on the following:

1. That MCFRS will have access and water supply as approved in the Site Plan (Exhibit 7);
2. The applicant must grant any necessary easements for county storm drainage facilities and public utilities, as applicable; and the applicant must meet the requirements of the MCPB in Preliminary Plan No. 11995042B (Exhibit 8);
3. The MCBS's approval of the pending site plan and other required approvals (Exhibit 9); and,
4. The Washington Suburban Sanitary Commission's approval of the pending site plan and other approvals.

Respectfully submitted,

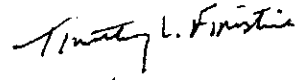
  
Michael L. Subin, Hearing Officer

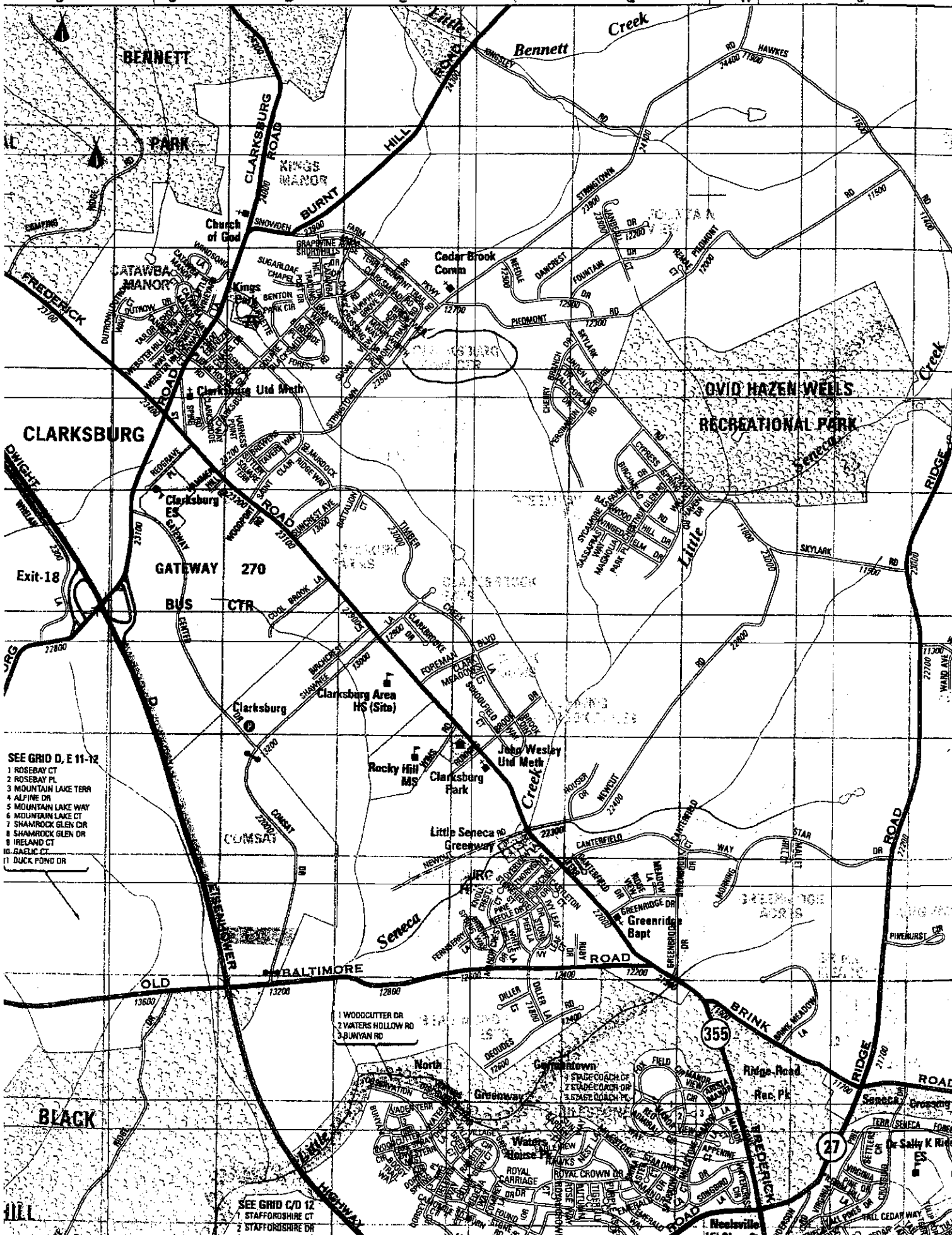
Date: May 20, 2016

The Public Hearing Officer's Report and Recommendation for the abandonment of certain rights-of-way in the Clarksburg Town Center has been reviewed and is APPROVED.

Timothy L. Firestine  
Chief Administrative Officer

Date:

  
5/19/2016





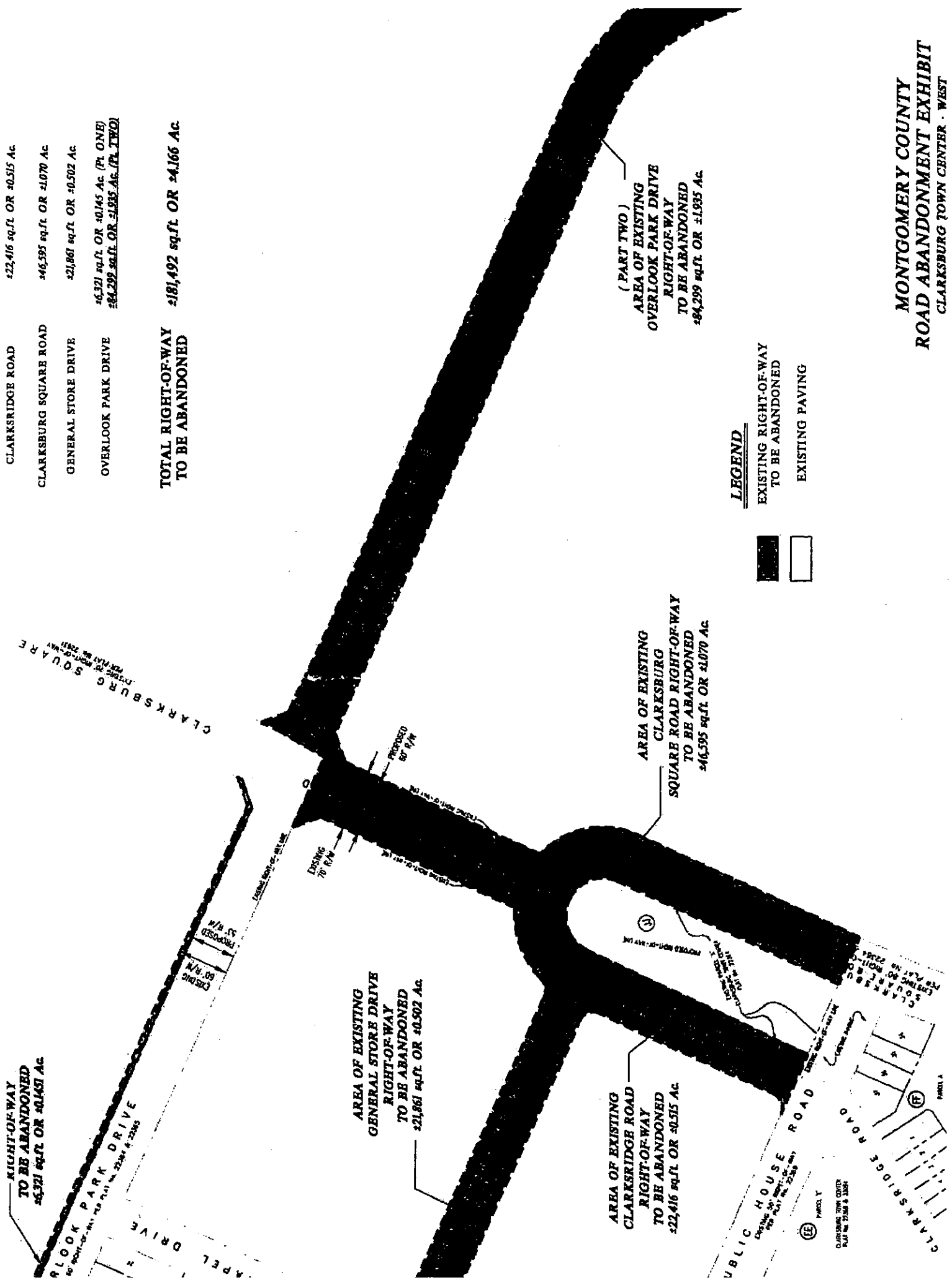
CLARKSRIDGE ROAD  
±22,416 sq.ft. OR ±0.515 Ac

CLARKSBURG SQUARE ROAD  
±46,595 sq.ft. OR ±1.070 Ac

GENERAL STORE DRIVE  
±21,861 sq.ft. OR ±0.502 Ac

OVERLOOK PARK DRIVE  
±6,321 sq.ft. OR ±0.145 Ac (Pt. ONE)  
±84,299 sq.ft. OR ±1.935 Ac (Pt. TWO)

TOTAL RIGHT-OF-WAY  
TO BE ABANDONED  
±181,492 sq.ft. OR ±4.166 Ac



**LEGEND**

EXISTING RIGHT-OF-WAY  
TO BE ABANDONED

EXISTING PAVING

MONTGOMERY COUNTY  
ROAD ABANDONMENT EXHIBIT  
CLARKSBURG TOWN CENTER - WEST